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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,801	05/22/2001	Tom Van Horn	22930-06067	8921

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EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,801

Applicant(s)

VAN HORN ET AL.

Examiner

Elaine Gort

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-12, drawn to a method for sourcing a featured item, classified in class 705, subclass 26.
- II. Claims 13-20, drawn to a computing system for sourcing a featured item, classified in class 709, subclass 217.

The inventions are distinct, each from the other because of the following reasons:

Inventions I. and II. are related as process and apparatus for its practice.

The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case Invention I. could be carried out by hand, at least in part. For example the steps of communicating, receiving consent, conducting sale, sending instructions, receiving a reservation, negotiating, etc, could be carried out by hand by an individual.

Because these inventions are distinct for the reasons given above, because the search required for each Invention is not required for the other Inventions, and because the inventions have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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During a telephone conversation with Thomas Ewing on June 9, 2003 a provisional election was made without traverse to prosecute the invention of Invention I., claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (US Patent 6,418,415) in view of Restatement of the Law, Second; Contracts 2d.

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Walker et al. discloses the claimed method but is silent regarding the presence of the management system communicating a quantity and time reservation to a supplier and receiving the supplier's consent to reserve the quantity for the time period. Restatement of the Law, Second; Contracts 2d discloses that it is old and well known in the art of contracts to use an "option contract" which incorporates a communication to a supplier of an offer including a quantity and a time reservation (see, for example, Illustration 1. on page 73) and when this offer is accepted by the seller, and the buyer gives some form of consideration, the offer becomes a binding contract that reserves the quantity for the time period for the buyer to allow the system to find buyers (customers) for the reserved quantity and to assure that the supply is available for these buyers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for sourcing a featured item for an on-line group-buying sale of Walker et al. with an option contract offer and acceptance of Restatement of the Law, Second; Contracts 2d, in order to assure that the supply is available for the buyers/customers making purchases on the on-line group buying system.

Walker et al. discloses a method for sourcing a featured item for an on-line group-buying sale comprising: communication with a supplier including a featured item quantity and a featured item time reservation and obtaining suppliers consent to a quantity for a time period (for example airlines provide information of which tickets are available for what prices and which dates when an airline supplies a CPO rule set defining which offers by buyers will be

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accepted); conducting an on-line group-buying sale for the featured item quantity and the negotiated featured item time reservation (for example the management system offers to sell these tickets via an on-line group-buying sale during the time they are available); and sending shipment instructions to the supplier regarding featured items sold in the on-line group-buying sale (for example the airline would receive an individual's address to mail the ticket to them or to notify the buyer of changes).

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. (US Patent 6,324,522) in view of Restatement of the Law, Second; Contracts 2d.

Peterson et al. discloses the claimed method but is silent regarding contract details regarding communicating a quantity and time reservation to a supplier and receiving the supplier's consent to reserve the quantity for a time period. Restatement of the Law, Second; Contracts 2d discloses that it is old and well known in the art of contracts to use an "option contract" which incorporates a communication to a supplier of an offer including a quantity and a time reservation (see, for example, Illustration 1. on page 73) and when this offer is accepted by the seller, and the buyer gives some form of consideration, the offer becomes a binding contract that reserves the quantity for the time period for the buyer to allow the buyers to be sure that they have the ability to purchase the quantity of products during the time period. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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method for sourcing a featured item for an on-line group-buying sale of Peterson et al. with an option contract offer and acceptance of Restatement of the Law, Second; Contracts 2d, in order to allow the buyer's (retailers/vendors) to be sure that they have the ability to purchase the quantity of products they may desire during a specific time period.

Peterson et al. discloses a method for sourcing a featured item for an on-line group-buying sale comprising: communication with a supplier a featured item quantity and obtaining suppliers consent to a quantity (for example communication is made with manufacturers regarding quantities available for sale); conducting an on-line group-buying sale for the featured item quantity and the negotiated featured item time reservation (for example the system offers to users the ability to purchase items via an on-line group-buying sale during the time they are available); and sending shipment instructions to the supplier regarding featured items sold in the on-line group-buying sale.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 703/308-6391. The examiner can normally be reached on Mon-Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 703/305-3597. The fax phone numbers for the organization where this application or proceeding is

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assigned are 703/305-7687 for regular communications and 703/605-7687 for
After Final communications.

Any inquiry of a general nature or relating to the status of this application
or proceeding should be directed to the receptionist whose telephone number is
703/305-1113.

EG


October 7, 2003

 10/8/03

ROBERT P. OLSZEWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600